

MONTANA LEGISLATIVE HISTORY

BEST COPY
AVAILABLEChapter 370 19 92Bill H _____ S 124 Original bill & history CH. Committee on State Admin.Hearing Date(s) Feb 02 ☒ C C C CDate Out Mar 06 ☒ CS. Committee on State Admin.Hearing Date(s) Jan 20 ☒ C C C CJan 22 ☒ CDid this bill originate in an interim committee? Yes NoCommittee Report

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

SB 122 INTRODUCED BY GAGE

LC0182 DRAFTER: MARTIN

MAKE OPERATORS PERSONALLY LIABLE FOR THE PAYMENT OF OIL AND
NATURAL GAS PRODUCTION TAXES

BY REQUEST OF DEPARTMENT OF REVENUE

1/03 INTRODUCED
 1/07 FIRST READING
 1/07 REFERRED TO TAXATION
 1/10 HEARING
 1/28 TABLED IN COMMITTEE
 4/05 MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
 DIED IN COMMITTEE

SB 123 INTRODUCED BY HARGROVE

LC0769 DRAFTER: MCCLURE

EXEMPT THE BOARD OF REGENTS FROM THE REQUIREMENT TO PAY A
FEE FOR ISSUANCE OF REVENUE BONDS

BY REQUEST OF BOARD OF REGENTS

1/03 INTRODUCED
 1/06 FISCAL NOTE REQUESTED
 1/07 FIRST READING
 1/07 REFERRED TO STATE ADMINISTRATION
 1/13 FISCAL NOTE RECEIVED
 1/14 FISCAL NOTE PRINTED
 1/28 HEARING
 1/28 TABLED IN COMMITTEE
 3/03 MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
 DIED IN COMMITTEE

SB 124 INTRODUCED BY CHRISTIAENS

LC0411 DRAFTER: HEFFELFINGER

REVISE THE LAWS ADMINISTERED BY THE PUBLIC EMPLOYEES'
RETIREMENT BOARD

BY REQUEST OF PUBLIC EMPLOYEES' RETIREMENT BOARD

1/03	INTRODUCED		
1/07	FIRST READING		
1/07	REFERRED TO STATE ADMINISTRATION		
1/20	HEARING		
1/23	COMMITTEE REPORT—BILL PASSED		
1/24	2ND READING PASSED	48	0
1/25	3RD READING PASSED	45	1
	TRANSMITTED TO HOUSE		
1/27	FIRST READING		
1/27	REFERRED TO STATE ADMINISTRATION		
2/07	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/14	2ND READING CONCURRED	86	12
3/15	3RD READING CONCURRED	83	15
	RETURNED TO SENATE WITH AMENDMENTS		
3/19	2ND READING AMENDMENTS CONCURRED	50	0
3/20	3RD READING CONCURRED AS AMENDED	49	1
3/25	SIGNED BY PRESIDENT		
3/26	SIGNED BY SPEAKER		
3/26	TRANSMITTED TO GOVERNOR		
4/02	RETURNED TO SENATE WITH GOVERNOR'S PROPOSED AMENDMENTS		
4/07	2ND READING GOVERNOR'S PROPOSED AMENDMENTS CONCURRED	49	0

4/08	3RD READING GOVERNOR'S PROPOSED AMENDMENTS CONCURRED	49	1
	HOUSE		
4/11	2ND READING GOVERNOR'S PROPOSED AMENDMENTS CONCURRED	91	3
4/12	3RD READING GOVERNOR'S PROPOSED AMENDMENTS CONCURRED	84	12
4/18	SIGNED BY PRESIDENT		
4/20	SIGNED BY SPEAKER		
4/21	TRANSMITTED TO GOVERNOR		
4/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 370		
	EFFECTIVE DATE: 04/23/97		

SB 125 INTRODUCED BY CHRISTIAENS *LC0346 DRAFTER: PETESCH*

ADOPT THE UNIFORM UNCLAIMED PROPERTY ACT
BY REQUEST OF DEPARTMENT OF REVENUE

1/03	INTRODUCED		
1/06	FISCAL NOTE REQUESTED		
1/07	FIRST READING		
1/07	REFERRED TO STATE ADMINISTRATION		
1/16	HEARING		
1/17	FISCAL NOTE RECEIVED		
1/17	FISCAL NOTE PRINTED		
1/24	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/27	2ND READING PASSED	41	9
1/28	3RD READING PASSED	45	4
	TRANSMITTED TO HOUSE		
1/29	FIRST READING		
1/29	REFERRED TO TAXATION		
2/05	HEARING		
2/06	COMMITTEE REPORT—BILL CONCURRED		
3/10	2ND READING CONCURRED	82	16
3/11	3RD READING CONCURRED	87	12
	RETURNED TO SENATE		
3/13	SIGNED BY PRESIDENT		
3/13	SIGNED BY SPEAKER		
3/14	TRANSMITTED TO GOVERNOR		
3/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 124		
	EFFECTIVE DATE: 07/01/97		

SB 126 INTRODUCED BY NELSON *LC0773 DRAFTER: ERICKSON*

INCREASE THE MAXIMUM AMOUNT OF AN EDUCATIONAL DEBT PAYMENT
THAT A RURAL PHYSICIAN MAY RECEIVE FROM THE BOARD OF
REGENTS

BY REQUEST OF BOARD OF REGENTS

1/03	INTRODUCED		
1/06	FISCAL NOTE REQUESTED		
1/07	FIRST READING		
1/07	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/13	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/17	HEARING		
1/27	COMMITTEE REPORT—BILL PASSED		
1/28	2ND READING PASSED	49	0

SENATE BILL NO. 124

INTRODUCED BY CHRISTIAENS

BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD; PROVIDING THAT FEDERAL TAX LAWS GOVERNING QUALIFICATION OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEMS SUPERSEDE CONFLICTING STATE STATUTES; GIVING THE BOARD RULEMAKING AUTHORITY; DEFINING "STATUTORY BENEFICIARY" AND "TERMINATION OF EMPLOYMENT" OR "TERMINATION OF SERVICE"; ALLOWING MEMBERS OF THE GAME WARDENS' RETIREMENT SYSTEM TO QUALIFY PERIODS OF ABSENCE FROM COVERED EMPLOYMENT BECAUSE OF SERVICE-CONNECTED INJURY OR ILLNESS; CLARIFYING CERTAIN SERVICE CREDIT PROVISIONS; ALLOWING MAILINGS FOR CERTAIN NONPROFIT ORGANIZATIONS; CLARIFYING CERTAIN DEFINITIONS; PROVIDING THAT FAMILY LAW ORDERS MAY NOT BE ENTERED UNLESS CERTAIN PROVISIONS ARE APPROVED BY THE BOARD; REVISING CERTAIN OPTIONAL MEMBERSHIP PROVISIONS; REVISING PROVISIONS RELATED TO THE TRANSFER OF SERVICE FROM THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING BENEFIT COMMENCEMENT DATES FOR ALL SYSTEMS; ALLOWING CANCELLATION OF DISABILITY BENEFITS AND AN EXCEPTION TO REINSTATEMENT PROVISIONS; REVISING CERTAIN PROVISIONS RELATED TO BENEFICIARY DESIGNATION AND SURVIVOR BENEFIT OPTIONS; AMENDING SECTIONS 2-6-109, 19-2-303, 19-2-701, 19-2-702, 19-2-704, 19-2-801, 19-2-802, 19-2-907, 19-3-401, 19-3-412, 19-3-504, 19-3-511, 19-3-513, 19-3-1015, 19-3-1104, 19-3-1601, 19-5-103, 19-5-601, 19-5-801, 19-6-501, 19-6-612, 19-7-501, 19-7-612, 19-7-708, 19-8-601, 19-8-712, 19-8-1101, 19-9-801, 19-9-904, 19-9-905, 19-13-701, 19-13-804, 19-13-805, AND 19-17-102, MCA; REPEALING SECTIONS 19-3-903 AND 19-3-1006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 1 and 3] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each

1 retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which
2 may be amended from time to time.

3 It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of
4 the Internal Revenue Code and related federal regulations and that would result in a retirement plan being
5 disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred
6 status.

7 It is the further intent of the legislature to clarify when a member of a retirement system becomes
8 a retiree. The retirement date is the date on which the member accepts the first benefit payment. An
9 inactive member who has not met all eligibility requirements for retirement, including proper submission of
10 a written application for retirement benefits, should not be considered a "retiree" during the period of time
11 before the member actually began receiving benefit payments, even though the member may later receive
12 payments retroactive to an earlier commencement date. Because retirees may not earn membership service
13 or purchase service credits in the retirement systems and active and inactive members may not receive
14 benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems
15 to clarify the retirement date of each member.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 **NEW SECTION. Section 1. Retaining qualified plan status -- board rulemaking authority.** If a
20 statutory provision affecting a retirement plan administered by the board conflicts with a qualification
21 requirement in section 401 of the Internal Revenue Code and consequent federal regulations, the provision
22 is either ineffective or must be interpreted to conform with the federal qualification requirements and allow
23 the system to retain tax-deferred status. The board may adopt rules to implement this section.

24
25 **NEW SECTION. Section 2. Absence due to injury or illness.** (1) Time, not to exceed 5 years,
26 during which a member is absent because of an injury or illness is considered membership service if, within
27 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the
28 course of the member's employment. However, the member may not earn service credits for the absence
29 unless the member complies with subsections (2) through (4), in which case the absence is considered as
30 time spent in service for both service credits and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute an amount equal to the contributions that the member would have made on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to covered service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to covered service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

(4) Payment of the employee's contributions due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered service.

(5) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which benefits are received if the member retires during the absence.

NEW SECTION. **Section 3. Time of commencement of benefit.** (1) (a) The board shall grant a benefit to any member, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated covered service, and filed the appropriate written application.

(b) A member may apply for retirement benefits before terminating covered service, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of membership service or, if requested by the inactive member in writing, on the first day of a later month following receipt of the written application.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits commence on the first day of the month following the official's last

1 full month in office. An official electing this option may not earn membership service, service credit, or
2 compensation for purposes of calculating final average salary under the retirement system in the partial
3 month ending the official's term, and compensation earned in that partial month is not subject to employer
4 or employee contributions.

5 (3) The disability retirement benefit payable to a member must commence on the day following the
6 member's termination from service.

7 (4) Monthly survivorship benefits must commence on the day following the death of the member.

8 (5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the
9 board.

10
11 **Section 4.** Section 2-6-109, MCA, is amended to read:

12 **"2-6-109. Prohibition on distribution or sale of mailing lists -- exceptions -- penalty.** (1) Except as
13 provided in subsections (3) through (8), in order to protect the privacy of those who deal with state and
14 local government:

15 (a) an agency may not distribute or sell for use as a mailing list any list of persons without first
16 securing the permission of those on the list; and

17 (b) a list of persons prepared by the agency may not be used as a mailing list except by the agency
18 or another agency without first securing the permission of those on the list.

19 (2) As used in this section, "agency" means any board, bureau, commission, department, division,
20 authority, or officer of the state or a local government.

21 (3) Except as provided in 30-9-403, this section does not prevent an individual from compiling a
22 mailing list by examination of original documents or applications that are otherwise open to public
23 inspection.

24 (4) This section does not apply to the lists of registered electors and the new voter lists provided
25 for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, or
26 to lists of persons holding driver's licenses provided for under 61-5-126.

27 (5) This section does not prevent an agency from providing a list to persons providing prelicensing
28 or continuing educational courses subject to Title 20, chapter 30, or specifically exempted from that
29 chapter as provided in 20-30-102, or subject to Title 33, chapter 17.

30 (6) This section does not apply to the right of access either by Montana law enforcement agencies

or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a third party with tax-exempt status under section ~~501(c)(3)~~ 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the third party.

(9) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

Section 5. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a system, together with the regular interest on the contributions.

(2) "Active member" means a member who is ~~an a paid~~ a paid employee of an employer ~~and who, is~~ making the required contributions ~~to the system based on the member's compensation paid by the employer, and is properly reported to the division for the most current reporting period.~~

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a retirement system over the present value of future normal costs in that retirement system.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member to purchase various types of optional service credit as allowed by the applicable retirement system.

(8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and are not subject to periodic or one-time increases.

(9) "Benefit" means the service or disability retirement or survivorship benefit payment provided by a retirement system.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing ~~annuity~~ monthly benefit after the death of a retired member.

(12) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement system and that are used to calculate service or disability retirement or survivorship benefits under a retirement system.

(13) "Department" means the department of administration.

(14) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits or lump-sum payments upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(15) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(16) "Division" means the public employees' retirement division of the department of administration.

(17) "Employee" means a person who is employed by an employer in any capacity and whose salary is paid by the employer.

(18) "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

(19) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(20) "Fiscal year" means any year commencing with July 1 and ending the following June 30.

(21) "Inactive member" means a member who ~~has terminated service with an employer and has not withdrawn the member's accumulated contributions from the retirement system~~ is not an active or retired member.

(22) "Member" means any person with accumulated contributions and service credited with a retirement system or receiving a retirement benefit on account of the person's previous service credited in a retirement system.

(23) "Membership service" or "years of service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(24) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a retirement system during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement system.

(25) "Pension" means benefit payments for life derived from contributions to a system made from state- or employer-controlled funds.

(26) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system in public trust.

(27) "Regular contributions" means contributions required from members under a retirement system.

(28) "Regular interest" means interest at the rate set from time to time by the board.

(29) "Retirement" or "retired" means the status of a member who has terminated from service ~~with~~ and has received and accepted a retirement benefit ~~under~~ from a retirement system.

(30) "Retirement benefit" means the periodic benefit payable ~~following~~ as a result of service, early, or disability retirement under a retirement system. An annuity is not a retirement benefit.

(31) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(32) "Service" means employment of an employee in a position covered by a retirement system.

(33) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers' or firefighters' unified retirement systems who are statutorily designated to receive benefits upon the death of the member.

(34) "Supplemental cost" means an element of the total actuarial cost of a retirement system arising from benefits payable for service performed prior to the inception of the retirement system or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or

otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement system.

~~(34)~~(35) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a retirement system.

~~(35)~~(36) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

(37) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement system's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(36)~~(38) "Vested member" or "vested" means a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

~~(37)~~(39) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board considers necessary."

Section 6. Section 19-2-701, MCA, is amended to read:

"19-2-701. Service credit. Subject to the provisions of chapters 3, 5 through 9, and 13 ~~of this title~~, a member must receive 1 month of service credit for each full month of service under rules adopted by the board. Service credits must be used in calculating a retirement or survivorship benefit. A retired member is not eligible to earn service credit."

Section 7. Section 19-2-702, MCA, is amended to read:

"19-2-702. Membership service. A member who is not retired must receive membership service for all periods of service, regardless of hours worked or compensation received during that service. The service must be used to determine:

1 (1) whether a member is vested;

2 (2) when the member is eligible for early or normal service retirement or disability retirement; or

3 (3) the eligibility of beneficiaries for survivorship benefits."

4
5 **Section 8.** Section 19-2-704, MCA, is amended to read:

6 **"19-2-704. Purchasing service credits allowed.** (1) Subject to the rules promulgated by the board,
7 an eligible member may elect to contribute amounts in addition to the mandatory employee contributions
8 required by the retirement system in which the member participates for the purpose of purchasing service
9 credits as provided by the statutes governing the retirement system.

10 (2) A member eligible to qualify service under the provisions of 19-3-509, 19-3-511, 19-6-802,
11 19-7-802, 19-8-902, 19-9-405, and 19-13-404 may, at any time prior to retirement, elect to transfer all
12 or a portion of the member's accumulated contributions on deposit in a pension trust fund from which
13 service is being transferred to the pension trust fund of another plan in which service is being credited. The
14 transfer of contributions may include both taxed contributions and tax-deferred contributions and interest.
15 However, if less than all of the accumulated contributions on deposit in a pension trust fund is being
16 transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with
17 the remainder refunded to the member. The transferring agency shall identify at the time of the transfer the
18 taxed and tax-deferred amounts being transferred.

19 (3) Subject to any statutory provision establishing stricter limitations, only active or vested inactive
20 members are eligible to purchase, qualify, or transfer service credits, membership service, or contributions."

21
22 **Section 9.** Section 19-2-801, MCA, is amended to read:

23 **"19-2-801. Designation of beneficiary.** In the absence of any ~~statutorily designated persons~~
24 statutory beneficiaries, the designated beneficiaries of a member are the natural persons, ~~charitable~~
25 ~~organizations, or trusts for the benefit of natural living persons~~ that the member or payment recipient
26 designates on the membership card or other form provided by the division. Unless otherwise provided by
27 statute, a member or payment recipient may revoke the designation and name different designated
28 beneficiaries by filing with the board a new membership card ~~with the board~~ or other form provided by the
29 division."

1 **Section 10.** Section 19-2-802, MCA, is amended to read:

2 **"19-2-802. Effect of no designation or no surviving designated beneficiary.** (1) If a living statutory
3 ~~or designated~~ beneficiary, ~~existing charitable organization, or natural living person who is the beneficiary~~
4 ~~of a trust is not designated~~ does not survive the member or payment recipient, the estate of the member
5 or payment recipient is the designated beneficiary entitled to any lump-sum payment or retirement benefit
6 accrued but not received prior to the statutory or designated beneficiary's death. If the estate would not
7 be probated but for the amount due from the retirement system, all of the amount due, ~~including retirement~~
8 ~~benefits accrued but not received prior to death,~~ must be paid directly, without probate, to the surviving
9 next of kin of the deceased or the guardians of the survivor's estate, share and share alike.

10 (2) Payment must be made in the same order in which the following groups are listed:

- 11 (a) husband or wife;
12 (b) children;
13 (c) father and mother;
14 (d) grandchildren;
15 (e) brothers and sisters; or
16 (f) nieces and nephews.

17 (3) A payment may not be made to a person included in any of the groups listed in subsection (2)
18 if at the date of payment there is a living person in any of the groups preceding the group of which the
19 person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon
20 a form supplied by the retirement division, that there are no living individuals in the groups preceding the
21 group of which the person is a member and that the estate of the deceased will not be probated.

22 (4) The payment must be in full and complete discharge and acquittance of the board and system
23 on account of the member's or payment recipient's death."

24
25 **Section 11.** Section 19-2-907, MCA, is amended to read:

26 **"19-2-907. Alternate payees -- family law orders.** (1) A participant in a retirement system may
27 have the participant's rights modified or recognized by a family law order.

28 (2) For purposes of this section:

29 (a) "participant" means a member or an actual or potential beneficiary, survivor, or contingent
30 annuitant of a retirement system designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17; and

(b) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section.

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system.

(5) A family law order may only provide for payment to an alternate payee as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be apportioned to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount per month if the number of payments is specified. The alternate payee's rights and interests survive

1 the alternate payee's death and may be transferred by inheritance.

2 (e) The participant may be required to choose a specified form of benefit payment or designate a
3 beneficiary or contingent annuitant if the retirement system allows for that option.

4 (6) The board may assess a participant or an alternate payee for all costs of reviewing and
5 administering a family law order, including reasonable attorney fees. The board may adopt rules to
6 implement this section.

7 (7) A court may not enter a family law order unless terms of the proposed order that relate to
8 payments by the retirement system have been approved by the board."

9
10 **Section 12.** Section 19-3-401, MCA, is amended to read:

11 **"19-3-401. Membership -- inactive vested members -- inactive nonvested members.** (1) Except
12 as otherwise provided in this chapter, all ~~eligible~~ employees shall become members on the first day of
13 ~~covered employment service~~. Each ~~eligible employee employer~~ shall file with the board information affecting
14 ~~the employee's~~ their employees' status as ~~a member~~ members of the retirement system as the board may
15 require.

16 (2) A member with at least 5 years of membership service who terminates service and does not
17 take a refund of the member's accumulated contributions is an inactive vested member and retains the right
18 to purchase service and to receive a service retirement benefit subject to the provisions of this chapter.

19 (3) A member with less than 5 years of membership service who terminates service and leaves the
20 member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not
21 eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a
22 refund of the member's accumulated contributions.

23 (4) Every employee who reenters service shall become a member unless the employee has had an
24 original election of exemption from membership and the employee's service was not interrupted by a break
25 of more than 1 month. A seasonal employee who has had an original election of exemption from
26 membership is not subject to the requirement regarding the break in service while continuing in the
27 employee's original employment and employed on a seasonal basis, but upon termination of employment
28 to accept new employment or absence of more than 1 month in returning to original employment in any
29 ensuing season, the seasonal employee shall become a member of the retirement system upon reentry.

30 (5) Time during which an employee of a school district is absent from service during official

vacation is counted as service in determining eligibility for membership under this chapter."

Section 13. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) The following employees in covered employment may become members of the retirement system at their option at any time during their employment in a covered position by filing a membership card with the board:

(1)(a) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(2)(b) part-time employees serving in employment that does not exceed ~~the equivalent of 120 working days~~ a total of 960 hours of employment covered by this chapter in any fiscal year;

(3)(c) employees directly appointed by the governor;

(4)(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(5)(e) the chief administrative officer of any city or county;

(6)(f) employees of county hospitals or rest homes in the sixth- and seventh-class counties.

(2) If an employee declines optional membership, the employee shall execute a statement waiving membership and the employer shall retain the statement."

Section 14. Section 19-3-504, MCA, is amended to read:

"19-3-504. Absence due to illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service ~~by reason because~~ of injury or illness ~~determined within 1 year after the end of the absence as arising out of and in the course of the member's employment~~ is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credits for this period unless the member complies with subsections (2) through (4), in which case the absence is considered as time spent in service for both service credits and membership ~~credits~~ service.

(2) (a) ~~Any~~ A member absent because of an employment-related injury ~~that entitles~~ entitling the member to workers' compensation payments may, upon the member's return to service, contribute to the retirement system, ~~upon the member's return to service~~, an amount equal to the contributions that would have been made by the member to the system on the basis of the member's compensation at the

1 commencement of the member's absence plus regular interest accruing from 1 year from the date after the
2 member returns to covered service to the date the member contributes for the period of absence.

3 (b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute
4 ~~an amount equal to what its employer contributions would have been had the member not been absent from~~
5 ~~service. In addition, the employer may contribute an amount equal to the interest accruing for the period~~
6 of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's
7 contribution calculated in the same manner as interest on the employee's contribution under subsection
8 (2)(a). An employer electing to make ~~a contribution~~ an interest payment shall do so for all employees
9 similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the
10 employee.

11 (3) At some time after returning to covered service, a member shall file with the board a written
12 notice of the member's intent to pay the contributions under subsection (2).

13 (4) Payment of the employee's contributions that are due because of the period of absence may
14 be made in one sum at the time of filing the notice or on an installment basis before termination of covered
15 service.

16 (5) A member loses the right to contribute for an absence under this section if all of the member's
17 accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which
18 retirement benefits are received if the member retires during the absence."

19
20 **Section 15.** Section 19-3-511, MCA, is amended to read:

21 **"19-3-511. Transfer of service credits and contributions from teachers' retirement system.** (1) An
22 active member may at any time before retirement make a written election with the board to qualify in the
23 public employees' retirement system all of the member's service in the teachers' retirement system for
24 which the member either has received or is eligible to receive a refund.

25 (2) The amount that must be paid or transferred to the retirement system to qualify this service
26 under this section is the sum of subsections (2)(a) and ~~(3)~~ (2)(b)- as follows:

27 ~~(2) In addition to the amounts directly paid or transferred by the member under subsection (3), the~~
28 (a) The teachers' retirement system shall transfer ~~to the public employees' retirement system~~ an
29 amount equal to 72% of the amount payable by the member.

30 ~~(3)(b)~~ The member shall pay either directly or by transferring contributions on account with the

1 teachers' retirement system an amount equal to the member's accumulated contributions at the time that
2 active membership was terminated with the teachers' retirement system, plus accrued interest. Interest
3 must be calculated from the date of termination until payment is received by the public employees'
4 retirement system, based on the interest tables in use by the teachers' retirement system.

5 ~~(4)~~(3) The amount of service credit granted in subsection (1) must be on a month-by-month basis.
6 Military service credit transferred from the teachers' retirement system must be included in the 5-year
7 maximum military service credit provided for in 19-3-503.

8 ~~(5)~~(4) Subject to the provisions of 19-2-403, the board is the sole authority in determining the
9 amount of service credit qualified under this section and the amount paid to the retirement system under
10 ~~subsections~~ subsection (2) and (3).

11 ~~(6)~~(5) If an active member who also has service credit in the teachers' retirement system dies
12 before the member qualifies this service in the public employees' retirement system and if the service
13 credits from both systems, when combined, entitle the member's designated beneficiary to a survivorship
14 benefit, the payment of the survivorship benefit is the liability of the public employees' retirement system.
15 Before payment of the survivorship benefit, the teachers' retirement board shall transfer to the public
16 employees' retirement system the contributions necessary to qualify this service in the public employees'
17 retirement system as provided in ~~subsections~~ subsection (2) and (3).

18 (6) If the board determines that a member was erroneously classified and reported to the teachers'
19 retirement system, the member's accumulated contributions and service, together with the employer
20 contributions plus interest, must be transferred to the public employees' retirement system. Employee and
21 employer contributions due as calculated under 19-3-315 and 19-3-316 are the liability of the employee
22 and the employing entity, respectively, where the error occurred. For the period of time that the employer
23 contributions are held by the teachers' retirement system, interest paid on employer contributions
24 transferred under this subsection must be calculated at the short-term investment pool rate earned by the
25 board of investments in the fiscal year preceding the transfer request."

26
27 **Section 16.** Section 19-3-513, MCA, is amended to read:

28 **"19-3-513. Election to purchase additional service.** (1) At any time before retirement, a person
29 who became a member of the retirement system before July 1, 1989, and who has 5 years or more of
30 membership service may make a written election with the board to purchase additional service credit for

1 the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the
2 member may purchase 1 year of additional service credit for each 5 years of membership service that the
3 member has qualified under the retirement system, up to a maximum of 5 years of additional service.

4 (2) For each year of service credit purchased under this section, a member shall ~~contribute~~ make
5 additional contributions to the pension trust fund in an amount equal to the member's compensation for
6 the 12-month period ~~immediately~~ of full-time service most recently preceding the date on which the member
7 elects to purchase the service multiplied by the combined employee and employer contribution rates
8 contained in 19-3-315 and 19-3-316. ~~Contributions~~ Additional contributions may be made in a lump-sum
9 payment or ~~by making additional contributions~~ in installments as agreed upon by the member and the board.
10 Inactive members shall pay interest from the date of termination to the date of payment. Active members
11 shall pay interest from the date of contracting to the date of payment. The board shall set interest rates
12 and approve contracts.

13 (3) (a) Except as provided in subsection (3)(b), after January 1, 1990, a member may elect to
14 qualify a combined total of 5 years of service under 19-3-503, 19-3-512, or this section.

15 (b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1,
16 1990, and who elects to purchase service under this section shall receive credit for the full months of
17 service purchased on or before January 1, 1990.

18 (4) Service purchased under this section is not membership service and may not be used to qualify
19 a member for service retirement."
20

21 **Section 17.** Section 19-3-1015, MCA, is amended to read:

22 **"19-3-1015. Medical examination of disability retiree -- cancellation and reinstatement.** (1) The
23 board may, in its discretion, require a disabled member to undergo a medical examination. The examination
24 must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the
25 retired member and the board. Upon the basis of the examination, the board shall determine whether the
26 disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements
27 of either the position held by the member when the member retired or the position proposed to be assigned
28 to the member. If the board determines the member is not incapacitated or if the member refuses to submit
29 to a medical examination, the member's retirement benefit must be canceled.

30 (2) If the board determines that a disabled member should no longer be subject to medical review,

the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) A (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in the same classification a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer terminates any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member's service is considered, for the purposes of 19-2-602, to have been discontinued coincident with the commencement of the member's retirement benefit."

Section 18. Section 19-3-1104, MCA, is amended to read:

"19-3-1104. Cancellation of disability retirement benefit upon reemployment. ~~Any~~ A person receiving a disability retirement benefit who becomes an employee is considered reinstated to service from retirement, and the person's disability retirement benefit ~~is~~ must be canceled."

Section 19. Section 19-3-1601, MCA, is amended to read:

"19-3-1601. Eligibility for postretirement adjustment. (1) Except as provided in subsection (2), a benefit recipient is eligible to receive a postretirement adjustment as provided in 19-3-1603 if the person

1 is receiving a:

2 (a) monthly service retirement benefit, and is ~~55 years of age or older on or before June 30 in the~~
3 ~~year that the postretirement adjustment is made; or~~

4 (b) disability retirement benefit, or survivorship benefit.

5 (2) A benefit recipient is ineligible to receive a postretirement adjustment under subsection (1)
6 unless the recipient has been receiving a monthly service, disability, or survivorship benefit for at least 24
7 consecutive months on or before June 30 in the year the adjustment is made."

8
9 **Section 20.** Section 19-5-103, MCA, is amended to read:

10 **"19-5-103. Call of retired judge for duty.** (1) Every judge or justice who has voluntarily retired after
11 8 years of service ~~shall~~ must, if physically and mentally able, be subject to call for duty by the supreme
12 court or the chief justice to aid and assist the supreme court, any district court, or any water court under
13 directions as the supreme court may give, including the examination of the facts, cases, and authorities
14 cited, and the preparation of opinions for and on behalf of the supreme court, district court, or water court,
15 or to serve as water judge. The opinions, when and if and to the extent approved by the court, may by the
16 court be ordered to constitute the opinion of the court. The court and the retired judge or justice may,
17 subject to any rule that the supreme court may adopt, perform any ~~and all~~ duties preliminary to the final
18 disposition of cases that are not inconsistent with the constitution of the state.

19 (2) A retired judge or justice, when called to ~~service~~ duty, must be reimbursed for actual expenses,
20 if any, in responding to the call. In addition, for each day of ~~service~~ duty, a retired justice or judge is
21 entitled to receive compensation in an amount equal to one-twentieth of the monthly salary then currently
22 applicable to the judicial position in which the ~~service~~ duty is rendered minus an amount equal to
23 one-twentieth of the monthly retirement benefit that the retired justice or judge is receiving, if any, for each
24 day of ~~service~~ duty rendered."

25
26 **Section 21.** Section 19-5-601, MCA, is amended to read:

27 **"19-5-601. Disability retirement benefit.** In case of the disability of a member, a disability
28 retirement benefit must be granted the member in an amount actuarially equivalent to the service retirement
29 benefit standing to the member's credit at the time of the member's disability retirement. If the disability
30 is a direct result of any service ~~to~~ or duty for the Montana judiciary ~~in the line of duty~~, the member ~~must~~

1 ~~receive a member's total~~ benefit must equal ~~to~~ one-half of the member's final current salary or the benefit
2 provided in 19-5-502, whichever is greater."

3
4 **Section 22.** Section 19-5-801, MCA, is amended to read:

5 **"19-5-801. Payments upon employment-related death.** If the board finds that a member died as
6 a direct and proximate result of injury received in the course of the member's service or duty, a survivorship
7 benefit must be paid to the member's designated beneficiary. The survivorship benefit is the greater of the
8 actuarial equivalent of a member's service retirement benefit provided for in 19-5-502 standing to the
9 member's credit on the date of death or of the contingent annuitant's benefit, if applicable. "

10
11 **Section 23.** Section 19-6-501, MCA, is amended to read:

12 **"19-6-501. Eligibility and application for service retirement benefit — commencement of benefit.**

13 (1) ~~(a)~~ A member first employed by the Montana highway patrol on or before July 1, 1985, is eligible to
14 receive a service retirement benefit after completing 20 years or more of membership service and
15 terminating service.

16 ~~(b)(2)~~ A member first employed by the Montana highway patrol after July 1, 1985, is eligible to
17 receive a service retirement benefit when the member has reached age 50, completed 20 years or more
18 of membership service, and terminated service.

19 ~~(2) A member eligible to receive a retirement benefit, as provided in subsection (1), shall apply in~~
20 ~~writing to the division.~~

21 ~~(3) (a) Except as provided in subsection (3)(b), the retirement benefit may commence on the first~~
22 ~~day of the month following the member's last day of covered service or, if requested by the inactive~~
23 ~~member in writing, on the first day of the month following receipt of the written application.~~

24 ~~(b) The retirement benefit for an eligible member who has terminated service must commence no~~
25 ~~later than the first day of the month following the member's 60th birthday."~~

26
27 **Section 24.** Section 19-6-612, MCA, is amended to read:

28 **"19-6-612. Medical examination of disability retiree -- cancellation of benefit.** (1) The board may
29 require the recipient of a disability retirement benefit to undergo a medical examination. The examination
30 must be made by a physician or surgeon at the recipient's place of residence or at another place mutually

1 agreed on, at the board's expense. Upon the basis of the examination, the board shall determine whether
2 the recipient can perform the essential elements of the position held by the recipient when the recipient
3 retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement
4 benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position
5 is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability.
6 If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must
7 be canceled.

8 (2) If the board determines that a recipient of a disability retirement benefit should no longer be
9 subject to medical review, the board may grant a service retirement status to the recipient without
10 recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change
11 in status. If the recipient disagrees with the board's determination, the recipient may request the board to
12 reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt
13 of the notice of the status change.

14 (3) A (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit
15 is canceled because the board has determined that the recipient is no longer incapacitated must be
16 reinstated to the position held by the recipient immediately before the recipient's retirement or to a position
17 ~~in the same classification~~ a comparable pay and benefit category within the recipient's capacity, whichever
18 is first open. The fact that the recipient was retired for disability may not prejudice any right to
19 reinstatement to duty that the recipient may have or claim to have.

20 (b) This section does not affect any requirement that the former employee meet or be able to meet
21 professional certification and licensing standards unrelated to the disability and necessary for reinstatement
22 to duty.

23 (4) The department of justice may request a medical or psychological review as to the ability of
24 the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the
25 department of justice shall pay the cost of the review."

26
27 **Section 25.** Section 19-7-501, MCA, is amended to read:

28 **"19-7-501. Eligibility and application for service retirement ~~—commencement of benefit.~~ (1)** A
29 member who has completed at least 20 years of membership service may retire on a service retirement
30 benefit.

~~(2) A member electing to retire shall apply in writing to the board.~~

~~(3) (a) Except as provided in subsections (3)(b) and (3)(c), the retirement benefit may commence on the first day of the month following the member's last day of service or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.~~

~~(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 65th birthday.~~

~~(c) If an elected official's term of office expires before the 15th day of the month, the official may elect to retire on the first day of the last month of the term of office. An official electing this option may not earn service or compensation for purposes of final average salary under the retirement system in that month, and compensation earned in that month is not subject to employer or member contributions."~~

Section 26. Section 19-7-612, MCA, is amended to read:

"19-7-612. Medical examination of disability retiree -- cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (2) or when, if a position is available, the recipient cannot be reinstated under subsection (2) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) A (a) Except as provided in subsection (2)(b), a person other than an elected official whose disability retirement benefit is canceled because the person is no longer incapacitated must be reinstated to the position held by the person immediately before the person's retirement or to a position in the same classification a comparable pay and benefit category within the person's capacity, whichever is first open. The fact that the person was retired for disability may not prejudice any right to reinstatement to duty that the person may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet

professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(3) The public body required to reinstate a person under subsection (2) may request a medical or psychological review as to the ability of the member to return to work as a member of the sheriff's department. If the board's findings are upheld, the public body shall pay the cost of the review."

Section 27. Section 19-7-708, MCA, is amended to read:

"19-7-708. Eligibility for postretirement adjustment. (1) Except as provided in subsection (2), a benefit recipient is eligible to receive a postretirement adjustment as provided in 19-7-710 if the recipient is receiving a:

~~(a) monthly service retirement benefit, and is 55 years of age or older on or before June 30 in the year that the postretirement adjustment is made; or~~

~~(b) disability retirement benefit, or survivorship benefit.~~

(2) A benefit recipient is ineligible to receive a postretirement adjustment under subsection (1) unless the monthly service, disability, or survivorship benefit has been paid for at least 24 consecutive months on or before June 30 in the year the adjustment is made."

Section 28. Section 19-8-601, MCA, is amended to read:

"19-8-601. Time of retirement — commencement of benefit. (1) ~~Any~~ A member in service who has completed at least 20 years of membership service, reached the age of 50 years, and terminated service may retire with a service retirement benefit upon written application to the board.

~~(2) (a) Except as provided in subsection (2)(b), the retirement benefit may commence on the first day of the month following the member's last day of service or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.~~

~~(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 60th birthday."~~

Section 29. Section 19-8-712, MCA, is amended to read:

"19-8-712. Medical examination of disability retiree -- cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another

place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) A (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in ~~the same classification~~ a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(4) The department of fish, wildlife, and parks may request a medical or psychological review as to the ability of the recipient to return to work as a game warden. If the board's findings are upheld, the department of fish, wildlife, and parks shall pay the cost of the review."

Section 30. Section 19-8-1101, MCA, is amended to read:

"19-8-1101. Eligibility for postretirement adjustment. (1) Except as provided in subsection (2), a benefit recipient is eligible to receive a postretirement adjustment as provided in 19-8-1103 if the recipient is receiving a:

~~(a) monthly service retirement benefit, and is 55 years of age or older on or before June 30 in the year that the postretirement adjustment is made; or~~

~~(b) disability retirement benefit, or survivorship benefit.~~

(2) A benefit recipient is ineligible to receive a postretirement adjustment under subsection (1) unless the monthly service, disability, or survivorship benefit has been paid for at least 24 consecutive months on or before June 30 in the year the adjustment is made."

Section 31. Section 19-9-801, MCA, is amended to read:

"19-9-801. Eligibility for service retirement —~~commencement of benefit.~~ (1) Members are eligible for retirement as provided in this section.

(2) A member is eligible to receive a service retirement benefit when the member has completed 20 years or more of membership service and has terminated service.

(3) A member who terminates service after completing at least 10 years of membership service but prior to completing 20 years of membership service is eligible to receive a service retirement benefit when the member has reached 50 years of age.

~~(4) (a) Except as provided in subsection (4)(b), the retirement benefit may commence on the first day of the month following the member's minimum retirement date or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.~~

~~(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 55th birthday."~~

Section 32. Section 19-9-904, MCA, is amended to read:

"19-9-904. Termination of disability benefit. The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If an inactive member is determined by the board to be no longer disabled, the inactive member's disability retirement benefit must be canceled when the inactive member is offered a position under 19-9-905 or when, if a position is available, the former employee could not be

reinstated under 19-9-905 for reasons unrelated to the disability. If the inactive member refuses to submit to a medical examination, the inactive member's disability retirement benefit must cease as of the date of the determination. The inactive member must be notified of the determination by the board. The board may review the status of an inactive member at any time."

Section 33. Section 19-9-905, MCA, is amended to read:

"19-9-905. Reinstatement upon termination of disability benefit. (1) A (a) Except as provided in subsection (1)(b), a retired member whose disability retirement benefit is cancelled as provided in 19-9-904 must be reinstated to the position held by the member immediately before retirement or to a position in ~~the same classification~~ a comparable pay and benefit category with duties within the member's capacity, whichever is first open. The board shall advise the employer that the disability retirement benefit has been cancelled and that the member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the member may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a police officer. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the retired member again becomes an active member by returning to service with an employer within 30 days following receipt of notice under 19-9-904, the member must be considered to have been continuously employed during the term of the member's disability. If the retired member fails to become an active member by returning to service with an employer within 30 days following receipt of the notice, the member's termination of service is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement date must be determined accordingly."

Section 34. Section 19-13-701, MCA, is amended to read:

"19-13-701. Eligibility for service retirement — ~~commencement of benefit.~~ (1) A member who has completed 20 years or more of membership service is eligible for service retirement ~~commencing on the first day of the month following the member's last day of service.~~

(2) A vested member who terminates service before the minimum retirement date and keeps the member's accumulated contributions on deposit is eligible for service retirement commencing on the member's minimum retirement date.

~~(3) A vested inactive member may file a written application with the board requesting that the member's retirement benefit commence on the first day of the month following receipt of the application. However, the retirement benefit for an inactive vested member must commence no later than the first day of the month following the member's 55th birthday."~~

Section 35. Section 19-13-804, MCA, is amended to read:

"19-13-804. Medical examination of disability retiree -- cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination at the board's expense. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on. Based on the results of the examination, the board shall determine whether the recipient has the physical or mental capacity to perform the essential elements required by the recipient's former position. If the board determines that the recipient is not incapacitated, ~~or if the recipient refuses to submit to a medical examination, or if, when a position is available, the recipient cannot be reinstated under 19-13-805 for reasons unrelated to the disability,~~ the recipient's disability retirement benefit must be canceled. The board shall notify the recipient of this determination and the cancellation of the recipient's benefit.

(2) The cancellation of a disability retirement benefit because a member is no longer incapacitated does not prejudice any right of the member to a service retirement benefit."

Section 36. Section 19-13-805, MCA, is amended to read:

"19-13-805. Reinstatement upon termination of benefit. (1) (a) ~~An inactive~~ Except as provided in subsection (1)(c), a member whose disability retirement benefit is canceled as provided in 19-13-804 must be reinstated to the position held by the member immediately before the member's retirement or to a position in ~~the same classification~~ a comparable pay and benefit category with duties within the member's capacity if an appropriate vacancy exists within the member's fire department. The board shall advise the employer that the disability retirement benefit has been canceled and that the inactive member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right

to reinstatement to duty that the inactive member may have or claim to have.

(b) If an appropriate vacancy does not exist within an inactive member's fire department when the member's disability benefit is canceled under 19-13-804, the member's benefit must be reinstated until a vacancy occurs.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a firefighter. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following receipt of notice under 19-13-804, the member is considered to have been continuously employed during the term of the member's disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of this notice, the member's termination of employment is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement must be determined accordingly."

Section 37. Section 19-17-102, MCA, is amended to read:

"19-17-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter during the most recently reportable fiscal year.

(2) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

(3) "Board" means the public employees' retirement board provided for in 2-15-1009.

(4) "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

(5) "Department" means the department of administration.

(6) "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

(7) "Disability" or "permanent total disability" ~~has the meaning~~ means permanent total disability as defined in 39-71-116.

(8) "Division" means the public employees' retirement division of the department.

(9) "Fire company" means a fire company organized in an unincorporated area, town, or village in accordance with 7-33-2311.

(10) "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

(11) "Member" means a volunteer firefighter who has service credited under this chapter.

(12) "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay benefits under this chapter.

(13) "Retiree" or "retired member" means a member who is receiving full or partial participation benefits from the pension trust fund.

(14) "Service" means cumulative periods of active membership that are credited only in full fiscal years.

(15) "Supplemental insurance" means insurance that is carried by a fire company for the purposes of providing disability or death benefits and that is in addition to any insurance required by law, including workers' compensation insurance.

(16) "Surviving spouse" means the spouse married to a member when the member dies.

(17) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

(18) "Volunteer firefighter" means a person who is an active member of an eligible fire company and is not compensated for services as a firefighter."

NEW SECTION. **Section 38. Repealer.** Sections 19-3-903 and 19-3-1006, MCA, are repealed.

NEW SECTION. **Section 39. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 19, chapter 2, part 10, and the provisions of Title 19, chapter 2, part 10, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 19, chapter 8, part 9, and the provisions of Title 19, chapter 8, part 9, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 19, chapter 2, part 9, and the provisions of Title 19, chapter 2, part 9, apply to [section 3].

1 NEW SECTION. **Section 40. Retroactive applicability.** [Section 15] applies retroactively, within
2 the meaning of 1-2-109, to the period beginning January 1, 1995.

3
4 NEW SECTION. **Section 41. Effective date.** [This act] is effective on passage and approval.

5 -END-

She introduced **Mr. Brian Cockhill, Director, Montana Historical Society**, who would explain the bill in more detail.

Informational Testimony:

Mr. Brian Cockhill, Director, Montana Historical Society, reported that, although they have not received a deluge of complaints, there have been some concerns that the Society is not open during hours more convenient to the public, such as evenings and weekends. He pointed out that their hours of operation are currently limited, by statute, to 8:00 a.m. to 5:00 p.m., Monday through Friday, and their funding for personnel is limited to the extent of those hours. He indicated that another option would be for them to request additional funding to hire extra staff, but they do not believe that would be a successful alternative.

Mr. Cockhill explained that the Society would like to have the flexibility to not necessarily be open from 8:00 a.m. to 5:00 p.m., Monday through Friday, but, possibly be open on Sunday and closed on Monday, or, perhaps, open at 10:00 a.m. and close at 7:00 p.m. or 8:00 p.m., adding that, if this bill passes, they would like to conduct a study of traffic to determine the hours of operation that would best serve the public, and present their proposal to the Board of Trustees for their approval. He added that the Society believes, with this flexibility in their hours of operation, they can utilize their current staff and funding without additional cost. He emphasized that they would not be reducing staff hours, that they intend to spread the staff time within the context of the new hours of operation in order to more effectively serve the public.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REPRESENTATIVE HAYNE stated that the Society needs authorization for more flexible hours in order to operate within their budget, and continue to carry out the Historical Society's mission. She indicated that she hoped the Committee would support this bill.

HEARING ON SB 124

Sponsor: **SENATOR CHRIS CHRISTIAENS, SD 23, GREAT FALLS**

Proponents: **Mike O'Connor, Acting Administrator, Public
Employees' Retirement Division
Tom Schneider, Montana Public Employees'
Association
Tim Burkstrom, Montana State Firemens' Association**

Opponents: None

Opening Statement by Sponsor:

SEN. CHRIS CHRISTIAENS, SD 23, CASCADE COUNTY, stated that he is presenting SB 124 at the request of the Public Employees Retirement Board. He reported that he was a member of the Committee that studied all the retirement systems, and that this proposal received a unanimous vote. He explained that this bill proposes revisions which are required in order to maintain the qualified plan status of the retirement systems, adding that representatives of the Public Retirement Division will explain the proposal in more detail. SEN. CHRISTIAENS continued that SB 124 was approved by the Study Committee, and that the Committees' report is attached to the bill, adding that there is no fiscal impact. He indicated that this proposal will bring these retirement systems into compliance, keep them whole, and protect members of the retirement systems.

Proponents' Testimony:

Mike O'Connor, Acting-Administrator, Public Employees' Retirement Division, read written testimony attached as (EXHIBIT 1).

Tom Schneider, Montana Public Employees' Association, indicated that they want to go on record in support of the bill. He reported that they worked with the Committee for the past two years, and agree with the sections which apply to them. He pointed out that, if the plan was found not to be qualified, the investments of the system would become taxable, that credits earned on an annual basis would become taxable to the members of the system, which would create a nightmare for the State of Montana, and they think it is important to keep the plan qualified.

Tim Burkstrom, Montana State Firemen's Association, stated that their organization also worked with the Committee, and they support this legislation.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. VIVIAN BROOKE referred to the change from 501(c)(3) to 501(c)(4) on page 5, line 7 of the bill, and asked Mr. O'Connor why they did not leave 501(c)(3) in there as well.

Mr. O'Connor responded that 501(c)(4) refers to non-profit employee organizations, and that it was the intent of the Board that this section apply only to organizations covered under 501(c)(4).

SEN. BROOKE asked if the Board intended that other non-profit organizations such as hospitals or charities not be included.

Mr. O'Connor responded that it was the intend of the Board that only non-profit employee organizations be allowed to use the mailing lists.

SEN. DELWYN GAGE referred to Section 2, subsection (2)(a) on page 3 of the bill, and asked **Mr. O'Connor** if the intent is that, if the member pays the contribution before the expiration of one year, the member does not have to pay any interest.

Mr. O'Connor responded that is correct.

SEN. GAGE asked what is meant by regular interest on line 4.

Mr. O'Connor explained that regular interest means interest calculated by financial institutions.

SEN. GAGE asked if the Board will adopt rules that will set the interest, or if it will be determined on an individual basis.

Mr. O'Connor responded that, currently, the Board adopts rules that set the interest rate which will be charged.

SEN. GAGE referred to line 15 on page 3, and asked if those installments would be worked out with each individual.

Mr. O'Connor responded that, currently, the member is provided with the cost of the service, if purchased, and with a variable payment schedule, so they can select which method they wish to use.

SEN. GAGE then referred to Section 2, subsection (2)(b), and asked how an employee would get notice that the employer is not going to pay interest on the employee's contributions.

Mr. O'Connor responded that the employer establishes a policy as to whether or not they will pay the interest on contributions, and the employer informs members of that policy.

SEN. GAGE asked if the language on page 17, line 14, "A member who is employed by an employer terminates any right to reinstatement provided by this section" means an employer other than the one the member was employed by before being injured.

Mr. Mike O'Connor responded that is correct.

SEN. GAGE asked why, on page 29, line 1, New Section 15 is being made retroactive to January 1, 1995.

Mr. O'Connor responded that New Section 15 applies to the transfer of employer contributions to the Teachers' Retirement System, that it was their intent to also transfer the interest

and they decided to make this Section effective as of January 1, 1995.

SEN. GAGE asked if there was any need to go back further than January 1, 1995.

Mr. O'Connor replied no, there is not.

Closing by Sponsor:

SEN. CHRISTIAENS made no closing statement.

EXECUTIVE ACTION ON HB 30

Amendments: None

Motion/Vote: SEN. KEN MESAROS moved that HB 30 BE CONCURRED IN.
The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 119

Amendments: SB011901.adn (EXHIBIT 2)

Discussion:

Mr. David Niss reported that the sponsor presented amendments to SB 119, and that a representative from the Department of Revenue is available to answer questions from the Committee.

CHAIRMAN DON HARGROVE, asked the representative of the Department of Revenue would explain the amendments.

Bill Kloker, Tax Program Manager, Department of Revenue, pointed out that the first amendment will strike the new language in subsection (b) on page 9, line 29, through page 10, line 1. He indicated that this would allow an employer who has been in operation for less than a full twelve-months in the "look-back" period, and who has withheld less than \$1200, to remit annually. He explained that this language is being stricken because that is taken care of in the new subsection (c) on page 10, reiterating that this is for new employers who began operation during the year, or for small employers with less than \$1200 withholding. He noted that most of the amendments presented pertain to, or are a result of the first amendment.

{Tape: 1; Side: A; Approx. Time: 10:39 a.m.; Comments: End of Tape 1, Side A.}

Motion: SEN. FRED THOMAS moved to ADOPT SB011901.adn.

TESTIMONY IN SUPPORT OF
SB 124

on behalf of the
PUBLIC EMPLOYEES' RETIREMENT BOARD

SENATE STATE ADMIN.
EXHIBIT NO. 1
DATE 1-20-97
BILL NO. SB124

Presented by
Mike O'Connor, Acting-Administrator
Public Employees' Retirement Division

Changes in interpretation of state and federal laws through decisions in the courts, along with changing requirements of federal tax law requires a constant fine-tuning of our public retirement systems. Rather than clog the Legislative process with several small proposals, the Board has requested one "general revision" bill which will make several "housekeeping," but necessary, changes. None of the proposals will have an actuarial impact. None require increased funding. These changes include the following:

- To receive status as "qualified" retirement plans, allowing contributions to the trust fund to be income tax deferred, the retirement system plans must comply with IRC Section 401. Several provisions in Title 19, chapter 2 are designed to meet specific requirements of IRC Section 401. However, no provision directly acknowledges the overriding goal of being a qualified plan. This bill clarifies the fundamental importance of federal tax qualification of the systems and reenforcing the Board's authority to adopt appropriate rules premised on federal tax qualification criteria. A statement of intent is included for the Board's specified rulemaking authority. **Section 1**
- Provide members of the Game Wardens' Retirement System with the ability to purchase service credit for periods of compensated leave due to work-related injuries compensated by Workers' Compensation benefits. Also, in the PERS provision clarify the cost of such service purchase and whether such service can be purchased if the member has received a retirement benefit. **Section 2, 14, 39**
- Clarify when a member can apply for retirement benefits, when benefits commence and when benefits will be paid for service, survivorship, and disability retirement. Consolidate the time of commencement provisions in the general statute, making the terms applicable to all retirement systems. Eliminate the age requirement of when an inactive vested member is required to receive benefits. These age requirements do not comply with federal guidelines. **Sections 3, 23, 25, 28, 31, 34, Repeal 19-3-903 and 19-3-1006**
- Correct a drafting error from the last session. Amending Section 2-6-109, MCA (allowing mailings on behalf of certain nonprofit organizations). The citation is changed from "501(c)(3)" to "501(c)(4)." The appropriate citation 501(c)(4) organizations, like "Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare..." **Section 4**
- Clarify the definitions and more clearly distinguish active, inactive, and retired member. Retirement benefit, statutory beneficiary, termination of employment or termination of service. **Section 5**
- Clarify that only active and vested inactive members of each system are eligible to purchase, transfer, or qualify service credit, membership service, or contributions, to conform with current practice.

Provide a specific statement of eligibility in the general chapter, applicable to all systems, unless more restrictive eligibility criteria exist in a given system. **Section 8**

- Reenforce that retired members cannot earn service credit or earn membership service. Clarify for members and the court that if the member chooses to receive retirement benefits, service credit cannot be given for the same period. **Section 6, 7**
- Clarify the definition of "designated beneficiary," restrict designated beneficiaries to natural persons (to allow compliance with federal tax law), and clarify effect if no designation is made. A "designated beneficiary" can be named by an alternate payee under a family law order, on option not recognized in the definition of the term. Current law allows charitable organizations and trusts to be designated beneficiaries. This causes record keeping and reporting problems under current federal tax law. Also current practice allows a member to change designated beneficiaries on a form other than a membership card, a practice not reflected in the statute. When no beneficiary is designated, allow receipt by the estate of the deceased, which will allow the deceased to direct payment to a charity or a trust if desired. **Section 9, 10**
- Family Law Orders is a statutory exception to the rule that creditors cannot take retirement benefits. FLO's are subject to many statutory restrictions. For example, a FLO cannot require a type or kind of payment different from what is allowed the member. As a result, payment under a FLO might only come many years after the original order. It is essential that FLO's be properly drafted. For that reason, the Board reviews FLO's when entered. Clarify that Family Law Orders must be submitted to and approved by the retirement board before becoming effective. **Section 11**
- Clarify "optional membership" provisions in PERS and employers' responsibilities for making all employees aware of PERS membership eligibility provisions. An employee working part time for more than one PERS employer can exceed the number of hours necessary to be a full time employee. Full time employees are required to become members of PERS. Part time employees must be given the option of joining PERS. Confusion about these issues causes disputes about appropriate service credit and contributions, sometimes decades after the fact. Require employers to retain a statement that the employee has waived membership. The board will suggest a waiver form which fully informs employees of rights and obligations in PERS. **Section 13**
- Provide mechanisms to transfer interest on employer contributions between PERS and TRS when employees have been improperly reported to one system. If an employee is incorrectly reported to TRS or PERS, current law allows transfer of service credit, employee contributions and interest, and employer contributions, but interest on employer contributions arguably cannot be transferred. Such transfers have been discontinued since early 1995, when the problem was discovered. The TRS housekeeping legislation will similarly address the TRS to PERS transfers. Make the effect of those changes retroactive to January 1, 1995. **Section 15**
- Clarify terms of payment on 1 for 5 service purchases to conform with past practice regarding purchase by members who have been inactive. Current language is not clear regarding the contribution amount and interest chargeable on 1 for 5 service purchases. Clarify that contributions are made based on the most recent period of full time service and that installment payments are

allowed only on terms, including interest, to which the board agrees. **Section 16**

- Clarify conditions of return to work for those taken off disability retirement, specifying that an employer can require professional certifications on return to work, and correcting a drafting error in 19-3-1104 to conform text with the caption. Return to work in the same "classification" by a PERS member taken off disability retirement has become confusing as the term "classification" is used differently in other contexts. Once the member has returned to work for any PERS employer, they should have the same rights as other active employees. The retirement systems do not intend to affect any requirement for professional certification unrelated to the disability. PERS disability benefits end when the member is determined to be no longer disabled; other systems continue disability payment until the member is reemployed. Amend the language of the PERS statutes to substitute "comparable pay and benefit category" for the current language, "same classification." Limit reemployment rights to those not already working in a covered position. Specifically state in each retirement system that the board's determination of nondisability is final but professional certification can still be required. **Section 17, 18, 24, 26, 29, 32, 33, 35, 36**
- Correct improper use of the term "service" in Judges' Retirement System provisions concerning return to duty by retired judges and allow death benefits for death during active service or return to duty by retired members, establishing benefits appropriate to either situation. The term "service" has a defined meaning for all systems, including JRS. However, the JRS provisions concerning return to duty by retired judges call that duty "service." Strictly construed, this would lead to inappropriate consequences such as loss of retirement benefits when a judge is called back to duty. The benefit payable on death as a direct result of "service" applies only to active members because it assumes no retirement benefit has been paid. However, there is no reason to distinguish between those in active service and those who die as a result of being called back to duty as a retired judge. Where appropriate this bill replaces the term "service" with "duty." Establish benefits which can apply to death as a result of either active service or a return to duty from retirement. **Section 20, 21, 22**
- Clarify the definition of disability and permanent total disability in the Volunteer Firefighters' System. The definition of these terms refers to the definitions of the same terms in the workers' compensation statutes. However, the workers' compensation statutes have no definition of the term "disability." This bill amends the definition so that both terms are the workers' compensation statute definition of "permanent total disability." **Section 37**
- Eliminate age requirement for service retirement beneficiaries, to conform PERS, Sheriffs, and Game Wardens' postretirement adjustment statutes to Montana Supreme Court decision in Arneson v. TRS. The Montana Supreme Court has held that a postretirement adjustment cannot be withheld based on the age requirement for service retirement beneficiaries, because such a requirement violates constitutional guarantees of equal protection. The board has administered the postretirement adjustments accordingly, but the unconstitutional language still appears in the statute. This bill deletes the unconstitutional age requirement. **Section 19, 27, 30**

SEN:1997
wp.rollcall.man
CS-09

DATE 1-20-97

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: HB 30, SB124

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<i>Tom Schneider</i>	<i>MPEA</i>	<i>SB124</i>	<i>X</i>	
<i>Mike O'Connor</i>	<i>PERD</i>	<i>SB124</i>	<i>X</i>	
<i>Mary Phippen</i>		<i>SB124</i>		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Vote: The motion that AMENDMENT SB011401.adn BE
ADOPTED PASSED UNANIMOUSLY

Motion/Vote: SEN. BROOKE's motion that SB 114 DO PASS AS
AMENDED CARRIED UNANIMOUSLY

EXECUTIVE ACTION ON SB 124

Amendments: None

Discussion:

SEN. THOMAS referred to line 12 of the title, "allowing for mailings for certain nonprofit organizations", and asked Mr. Niss where that is covered in the bill.

Mr. Niss responded that it is on page 5, line 7, and refers to the 501(c)(4) issue.'

SEN. BROOKE pointed out that their intent, when they revised this last session, was those organizations they form within their retirement boards that would be 501(c)(4), that they wanted to restrict the mailing list only to those.

Motion/Vote: SEN. GAGE's motion that SB 124 DO PASS
CARRIED UNANIMOUSLY

COMMITTEE DISCUSSION

CHAIRMAN HARGROVE opened the discussion on SB 153.

Mr. Niss reported that he received a small amendment, (EXHIBIT 3) following the hearing on SB 153, which would change the wording on lines 14 and 15 to read "Whereas the Tenth Amendment reflects the fact that the people created the Federal Government for strictly limited purposes, and the states for general government purposes,".

SEN. THOMAS offered a motion to adopt Amendment SB015301.adn.

SEN. GAGE indicated that he discussed with the sponsor whether to include the initiative or referendum process in the statement on page 2, line 6, "the state's rejection may be in the form of a bill, joint resolution or executive order", and asked if the Committee would like to delay executive action until Mr. Niss could draft this amendment.

CHAIRMAN HARGROVE indicated that executive action would be postponed.

SEN. THOMAS withdrew his motion to adopt Amendment SB015301.adn.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 22, 1997

MR. PRESIDENT:

We, your committee on State Administration having had under consideration SB 124 (first reading copy -- white), respectfully report that SB 124 do pass.

Signed: Don Hargrove
Senator Don Hargrove, Chair

15 Amd. Coord.
— Sec. of Senate

151521SC.STS

SEN:1997
wp.rollcall.man
CS-09

HEARING ON SB 124

EXHIBIT 1.

Opening Statement by Sponsor: SEN. CHRIS CHRISTIAENS, S.D. 23.

EXHIBIT 2.

{Tape: 1; Side: a; Approx. Time Count: 39.6; Comments: None.}

Proponents' Testimony:

Michael O'Conner, Acting Administrator, Public Employees Retirement Division.

EXHIBIT 3.

{Tape: 1; Side: a; Approx. Time Count: 40.9; Comments: None.}

Jerry Williams, Montana Police Protective Association.

{Tape: 1; Side: b; Approx. Time Count: 9.2; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 1; Side: b; Approx. Time Count: 10.7; Comments: None.}

Closing by Sponsor: SEN. CHRISTIAENS closes.

{Tape: 1; Side: b; Approx. Time Count: 27.4; Comments: None.}

EXECUTIVE ACTION ON HB 376

Discussion: Continued Discussion on HB 376.

{Tape: 1; Side: b; Approx. Time Count: 31.2; Comments: None.}

Motion/Vote: DO PASS AS AMENDED/ motion carried 16-0.

{Tape: 1; Side: b; Approx. Time Count: 40.3; Comments: None.}

EXECUTIVE ACTION ON HB 134

Motion: REP. SIMPSON MOVED DO PASS ON HB 134.

{Tape: 1; Side: b; Approx. Time Count: 41.7; Comments: None.}

Amendments: hb0131401.ash

Motion: REP. MILLS MOVED TO AMEND.

{Tape: 1; Side: b; Approx. Time Count: 41.9; Comments: None.}

Vote: Motion carried 14-0.

{Tape: 1; Side: b; Approx. Time Count: 43.7; Comments: None.}

Motion/Vote: REP. SIMPSON MOVED DO PASS AS AMENDED/ motion carried 16-0.

{Tape: 1; Side: a; Approx. Time Count: 43.8; Comments: None.}



Committee on Public Employee Retirement Systems

54th Montana Legislature

EXHIBIT 1

DATE 2/7/97

SB 124

Room 138 State Capitol
Helena, MT 59620-1706
(406) 444-3084
FAX (406) 444-3036

SENATE MEMBERS

SUE BARTLETT
CHAIR
CASEY EMERSON
JOHN R. HERTEL
B.F. "CHRIS" CHRISTIAENS

HOUSE MEMBERS

BILL WISEMAN
VICE-CHAIR
PAT GALVIN
BETTY LOU KASTEN
CAROLYN SQUIRES

COMMITTEE STAFF

SHERI HEFFELFINGER
RESEARCHER
DAVID NISS
STAFF ATTORNEY
CHRISTEN TECCA
SECRETARY

REPORT ON SB 124

(Proposal #4 - Public Employees' Retirement Board housekeeping proposal)

This report is required under Section 5-21-105, MCA. The Committee on Public Employee Retirement Systems (CPERS) must report its recommendation on each proposal it reviews prior to each legislative session. This report must be attached to the actual bill if the proposal is introduced during the 1997 Legislative Session.

Bill summary

This bill is by request of the Public Employees' Retirement Board (PERB). The proposal is called a "housekeeping" bill because it revises and clarifies laws related to the administration of the retirement systems under the PERB. Benefits are not changed. The bill title lists the topics covered in the body of the bill.

Issue background

Issue areas include: (1) clarifying and correcting existing definitions and provisions related to termination, service credit, payment of benefits, and mailings for nonprofit organizations; (2) payments to a beneficiary; (3) retention of qualified plan status; (4) the cancellation of disability retirement benefits and reinstatement provisions.

- (1) The clarifications and corrections were noncontroversial.
- (2) The second issue relating to the designation of beneficiaries did raise a few questions. The bill disallows the designation of a charitable organization as a beneficiary. This will require members to designate a natural person as beneficiary. This change in statute is necessary to comply with the Internal Revenue Code, which requires that beneficiary payments be reported to the IRS with an individual's tax identification number. If a retirement plan member wants to contribute the payments to a charity, the member will have to designate a person as the beneficiary and then, through provisions of a will or agreement with the executor of the member's estate, designate that the payments go to a charity.

- (3) The third issue relates to Section 1 of the bill, which is aimed at ensuring that the retirement systems retain qualified plan (tax-deferred) status. This section reflects the PERB's concern that it needs express authority to adopt rules that will keep the retirement plans in compliance with federal laws and regulations as those laws and regulations change. As written, the section will still require that the board adopt rules that are consistent with state law. In other words, the PERB will not be able to adopt rules that supersede statute. However, Section 1 will ensure the statutes must be considered ineffective or be interpreted in a way that makes them consistent with federal laws governing qualification of the retirement plans.
- (4) Finally, the bill also addresses an issue raised by the Sheriffs' and Peace Officers' Association. The Association raised the concern that retirement laws could be interpreted to require that when a person is taken off of medical disability status, the person must be reinstated to a similar position even if the person is unable to meet a professional certification and licensing standard unrelated to the disability. Section 17 of the bill, amending section 19-3-1015, MCA, adds language that clarifies that the person must still be able to meet professional requirements in order to be reinstated.

Committee report

1. Public policy issues

As a housekeeping measure, the bill addresses administrative policy issues that do not change or impact overall public policy regarding the retirement systems.

2. Effect on other retirement systems

The bill's housekeeping measures include amendments affecting all of the retirement systems administered by the PERB.

3. Fiscal implications

None.

COMMITTEE RECOMMENDATION

The CPERS is required by statute to recommend that the legislature PASS or DO NOT PASS the proposal as presented to the CPERS. However, CPERS may also recommend amendments or further articulate the rationale behind its final recommendation.

A CPERS recommendation does not bind the full legislature to any particular course of action.

The CPERS voted 7 to 0 to recommend DO PASS on Proposal #4 (SB 124). *

(* One member was absent.)

EXHIBIT 2

DATE 2/7/97

SB 124

Amendments to Senate Bill No. 124
Third Reading Copy

Requested by Sen. Christiaens
For the Committee on House State Administration

Prepared by Sheri Heffelfinger
February 3, 1997

1. Title, line 21.
Following: "19-7-708,"
Insert: "19-7-801,"

2. Page 23.
Following: line 25
Insert:

"Section 30. Section 19-7-801, MCA, is amended to read:
"19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation -- payment of benefits by two systems. (1) A law enforcement officer who has not changed employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if the officer's combined service in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which the officer last made contributions. A member who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue the election. However, credit for service in the public employees' retirement system that has not been transferred prior to January 1, 1979, may not be transferred.

(2) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are governed by the provisions of the retirement system to which the officer last made contributions.

(3) The service retirement benefit of a member described in subsection (1) must be calculated separately for each system based on the service credited under each system. The calculation for the sheriffs' retirement system portion of the benefit must include the appropriate reduction in the retirement benefit for an optional retirement benefit elected under 19-7-1001. The final salary or final average salary for each calculation must be based on the highest compensation earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credited, of the combined benefit. ~~The combined benefit may not exceed 60% of the member's final salary or final average salary.~~

(4) Upon the death of a retired member receiving a service retirement benefit under this section, the survivor or contingent annuitant and the continuing benefit must be determined

separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the surviving spouse must receive a benefit equal to the municipal police officers' retirement system portion of the service retirement benefit as calculated at the time of the member's retirement. If the retired member leaves no surviving spouse or upon the death of the surviving spouse, the retired member's surviving dependent child, or children collectively if there are more than one, shall receive the same monthly benefits that a surviving spouse would receive for as long as the child or one of the children remains dependent as defined in 19-9-104. The benefits must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata benefits to that child must cease and be paid to the remaining children until all the children are no longer dependent.

(b) For the sheriffs' retirement system portion of the benefit:

(i) the contingent annuitant must receive a continuing benefit as determined under 19-7-1001, if the retired member elected an optional retirement benefit; or

(ii) if the retired member did not elect an optional retirement benefit, any payment owed the retired member, including the excess, if any, of the retired member's accumulated contributions standing to the retired member's credit at the time of retirement less payments made to the retired member must be paid to the retired member's designated beneficiary.""

Renumber: subsequent sections

TESTIMONY IN SUPPORT OF
SB 124

EXHIBIT 3
DATE 1/7/97
SB 124

on behalf of the
PUBLIC EMPLOYEES' RETIREMENT BOARD

Presented by
Mike O'Connor, Acting-Administrator
Public Employees' Retirement Division

Changes in interpretation of state and federal laws through decisions in the courts, along with changing requirements of federal tax law requires a constant fine-tuning of our public retirement systems. Rather than clog the Legislative process with several small proposals, the Board has requested one "general revision" bill which will make several "housekeeping," but necessary, changes. None of the proposals will have an actuarial impact. None require increased funding. These changes include the following:

- To receive status as "qualified" retirement plans, allowing contributions to the trust fund to be income tax deferred, the retirement system plans must comply with IRC Section 401. Several provisions in Title 19, chapter 2 are designed to meet specific requirements of IRC Section 401. However, no provision directly acknowledges the overriding goal of being a qualified plan. This bill clarifies the fundamental importance of federal tax qualification of the systems and reenforcing the Board's authority to adopt appropriate rules premised on federal tax qualification criteria. A statement of intent is included for the Board's specified rulemaking authority. **Section 1**
- Provide members of the Game Wardens' Retirement System with the ability to purchase service credit for periods of compensated leave due to work-related injuries compensated by Workers' Compensation benefits. Also, in the PERS provision clarify the cost of such service purchase and whether such service can be purchased if the member has received a retirement benefit. **Section 2, 14, 39**
- Clarify when a member can apply for retirement benefits, when benefits commence and when benefits will be paid for service, survivorship, and disability retirement. Consolidate the time of commencement provisions in the general statute, making the terms applicable to all retirement systems. Eliminate the age requirement of when an inactive vested member is required to receive benefits. These age requirements do not comply with federal guidelines. **Sections 3, 23, 25, 28, 31, 34, Repeal 19-3-903 and 19-3-1006**
- Correct a drafting error from the last session. Amending Section 2-6-109, MCA (allowing mailings on behalf of certain nonprofit organizations). The citation is changed from "501(c)(3)" to "501(c)(4)." The appropriate citation 501(c)(4) organizations, like "Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare..." **Section 4**
- Clarify the definitions and more clearly distinguish active, inactive, and retired member. Retirement benefit, statutory beneficiary, termination of employment or termination of service. **Section 5**
- Clarify that only active and vested inactive members of each system are eligible to purchase, transfer, or qualify service credit, membership service, or contributions, to conform with current practice.

Provide a specific statement of eligibility in the general chapter, applicable to all systems, unless more restrictive eligibility criteria exist in a given system. **Section 8**

- Reenforce that retired members cannot earn service credit or earn membership service. Clarify for members and the court that if the member chooses to receive retirement benefits, service credit cannot be given for the same period. **Section 6, 7**
- Clarify the definition of "designated beneficiary," restrict designated beneficiaries to natural persons (to allow compliance with federal tax law), and clarify effect if no designation is made. A "designated beneficiary" can be named by an alternate payee under a family law order, an option not recognized in the definition of the term. Current law allows charitable organizations and trusts to be designated beneficiaries. This causes record keeping and reporting problems under current federal tax law. Also current practice allows a member to change designated beneficiaries on a form other than a membership card, a practice not reflected in the statute. When no beneficiary is designated, allow receipt by the estate of the deceased, which will allow the deceased to direct payment to a charity or a trust if desired. **Section 9, 10**
- Family Law Orders is a statutory exception to the rule that creditors cannot take retirement benefits. FLO's are subject to many statutory restrictions. For example, a FLO cannot require a type or kind of payment different from what is allowed the member. As a result, payment under a FLO might only come many years after the original order. It is essential that FLO's be properly drafted. For that reason, the Board reviews FLO's when entered. Clarify that Family Law Orders must be submitted to and approved by the retirement board before becoming effective. **Section 11**
- Clarify "optional membership" provisions in PERS and employers' responsibilities for making all employees aware of PERS membership eligibility provisions. An employee working part time for more than one PERS employer can exceed the number of hours necessary to be a full time employee. Full time employees are required to become members of PERS. Part time employees must be given the option of joining PERS. Confusion about these issues causes disputes about appropriate service credit and contributions, sometimes decades after the fact. Require employers to retain a statement that the employee has waived membership. The board will suggest a waiver form which fully informs employees of rights and obligations in PERS. **Section 13**
- Provide mechanisms to transfer interest on employer contributions between PERS and TRS when employees have been improperly reported to one system. If an employee is incorrectly reported to TRS or PERS, current law allows transfer of service credit, employee contributions and interest, and employer contributions, but interest on employer contributions arguably cannot be transferred. Such transfers have been discontinued since early 1995, when the problem was discovered. The TRS housekeeping legislation will similarly address the TRS to PERS transfers. Make the effect of those changes retroactive to January 1, 1995. **Section 15**
- Clarify terms of payment on 1 for 5 service purchases to conform with past practice regarding purchase by members who have been inactive. Current language is not clear regarding the contribution amount and interest chargeable on 1 for 5 service purchases. Clarify that contributions are made based on the most recent period of full time service and that installment payments are

allowed only on terms, including interest, to which the board agrees. **Section 16**

- Clarify conditions of return to work for those taken off disability retirement, specifying that an employer can require professional certifications on return to work, and correcting a drafting error in 19-3-1104 to conform text with the caption. Return to work in the same "classification" by a PERS member taken off disability retirement has become confusing as the term "classification" is used differently in other contexts. Once the member has returned to work for any PERS employer, they should have the same rights as other active employees. The retirement systems do not intend to affect any requirement for professional certification unrelated to the disability. PERS disability benefits end when the member is determined to be no longer disabled; other systems continue disability payment until the member is reemployed. Amend the language of the PERS statutes to substitute "comparable pay and benefit category" for the current language, "same classification." Limit reemployment rights to those not already working in a covered position. Specifically state in each retirement system that the board's determination of nondisability is final but professional certification can still be required. **Section 17, 18, 24, 26, 29, 32, 33, 35, 36**
- Correct improper use of the term "service" in Judges' Retirement System provisions concerning return to duty by retired judges and allow death benefits for death during active service or return to duty by retired members, establishing benefits appropriate to either situation. The term "service" has a defined meaning for all systems, including JRS. However, the JRS provisions concerning return to duty by retired judges call that duty "service." Strictly construed, this would lead to inappropriate consequences such as loss of retirement benefits when a judge is called back to duty. The benefit payable on death as a direct result of "service" applies only to active members because it assumes no retirement benefit has been paid. However, there is no reason to distinguish between those in active service and those who die as a result of being called back to duty as a retired judge. Where appropriate this bill replaces the term "service" with "duty." Establish benefits which can apply to death as a result of either active service or a return to duty from retirement. **Section 20, 21, 22**
- Clarify the definition of disability and permanent total disability in the Volunteer Firefighters' System. The definition of these terms refers to the definitions of the same terms in the workers' compensation statutes. However, the workers' compensation statutes have no definition of the term "disability." This bill amends the definition so that both terms are the workers' compensation statute definition of "permanent total disability." **Section 37**
- Eliminate age requirement for service retirement beneficiaries, to conform PERS, Sheriffs, and Game Wardens' postretirement adjustment statutes to Montana Supreme Court decision in Arneson v. TRS. The Montana Supreme Court has held that a postretirement adjustment cannot be withheld based on the age requirement for service retirement beneficiaries, because such a requirement violates constitutional guarantees of equal protection. The board has administered the postretirement adjustments accordingly, but the unconstitutional language still appears in the statute. This bill deletes the unconstitutional age requirement. **Section 19, 27, 30**

VISITOR REGISTER

HOUSE STATE ADMINISTRATION COMMITTEE

DATE: 2-7-97

BILL NO: SB124 SPONSOR: Christaens

[illegible]

Please leave prepared testimony with secretary.

Witness statement forms are available if you care to submit written testimony.

Questions From Committee Members and Responses:

{Tape: 1; Side: a; Approx. Time Count: 10.7; Comments: None.}

Closing by Sponsor: SEN. JERGSON closes.

{Tape: 1; Side: a; Approx. Time Count: 11.3; Comments: None.}

Discussion on SB 124.

{Tape: 1; Side: a; Approx. Time Count: 11.8 through 20; Comments: None.}

Introduced amendment sb012305.ash.

{Tape: 1; Side: a; Approx. Time Count: 14.9; Comments: None.}

EXECUTIVE ACTION ON SB 124

Amendment: sb012405.ash

Motion: REP. MILLS MOVED TO RECONSIDER ACTION. Motion carried 16-0.

{Tape: 1; Side: a; Approx. Time Count: 20; Comments: None.}

Motion/Vote: REP. MILLS MOVED TO AMEND. Motion carried 15-1. Rep. Simpson voted no.

{Tape: 1; Side: a; Approx. Time Count: 20.5; Comments: None.}

Motion: REP. MILLS MOVED TO BE CONCURRED IN AS AMENDED.

{Tape: 1; Side: a; Approx. Time Count: 22.9; Comments: None.}

Motion/Vote: REP. BRAINARD MOVED TO TABLE. Motion failed 14-2. Rep. Brainard and Rep. Rehbein voted yes.

{Tape: 1; Side: a; Approx. Time Count: 23.2; Comments: None.}

Motion: REP. MILLS MOVED TO BE CONCURRED IN AS AMENDED. Motion carried 15-1. Rep. Rehbein voted no.

{Tape: 1; Side: a; Approx. Time Count: 23.8; Comments: None.}

HEARING ON SB 311

Opening Statement by Sponsor: SEN. BEA MCCARTHY, S.D. 19.

{Tape: 1; Side: a; Approx. Time Count: 24.2; Comments: None.}

Proponents' Testimony:

Rep. Haley Beaudry, H.D. 35.

{Tape: 1; Side: a; Approx. Time Count: 26.9; Comments: None.}

Evan Barrett.

EXHIBIT 1,2:

{Tape: 1; Side: a; Approx. Time Count: 28.5 through 4.8 (1/b); Comments: None.}



HOUSE STANDING COMMITTEE REPORT

March 6, 1997

Page 1 of 3

Mr. Speaker: We, the committee on State Administration report that Senate Bill 124 (third reading copy -- blue) be concurred in as amended.

Signed: 
Matt Denny, Chair

And, that such amendments read:

Carried by: Rep. Denny

1. Title, lines 13 and 14.

Strike: "PROVIDING THAT" on line 13

Insert: "REVISING CERTAIN PROVISIONS RELATED TO"

Strike: "MAY" on line 13 through "BOARD" on line 14

2. Title, line 21.

Following: "19-7-708,"

Insert: "19-7-801,"

3. Page 5, line 6.

Strike: "third party"

Insert: "retiree organization formed for board-administered retirement system participants and"

4. Page 5, line 8.

Strike: "third party"

Insert: "organization"

5. Page 12, lines 7 and 8.

Strike: "A court" on line 7 through "board" on line 8

Insert: "Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board"

Committee Vote:
Yes 15, No 1.

3/6
mp
491401SC.Hgd

6. Page 22.

Following: line 15

Insert:

"Section 28. Section 19-7-801, MCA, is amended to read:

"19-7-801. **Membership in municipal police officers' retirement system prior to or following city-county consolidation -- payment of benefits by two systems.** (1) A law enforcement officer who has not changed employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if the officer's combined service in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which the officer last made contributions. A member who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue the election. However, credit for service in the public employees' retirement system that has not been transferred prior to January 1, 1979, may not be transferred.

(2) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are governed by the provisions of the retirement system to which the officer last made contributions.

(3) The service retirement benefit of a member described in subsection (1) must be calculated separately for each system based on the service credited under each system. The calculation for the sheriffs' retirement system portion of the benefit must include the appropriate reduction in the retirement benefit for an optional retirement benefit elected under 19-7-1001. The final salary or final average salary for each calculation must be based on the highest compensation earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credited, of the combined benefit. ~~The combined benefit may not exceed 60% of the member's final salary or final average salary.~~

(4) Upon the death of a retired member receiving a service retirement benefit under this section, the survivor or contingent annuitant and the continuing benefit must be determined separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the surviving spouse must receive a benefit equal to the municipal police officers' retirement system portion of the service retirement benefit as calculated at the time of the member's retirement. If the retired member leaves no surviving spouse or upon the death of the surviving spouse, the retired member's surviving dependent child, or children

collectively if there are more than one, shall receive the same monthly benefits that a surviving spouse would receive for as long as the child or one of the children remains dependent as defined in 19-9-104. The benefits must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata benefits to that child must cease and be paid to the remaining children until all the children are no longer dependent.

(b) For the sheriffs' retirement system portion of the benefit:

(i) the contingent annuitant must receive a continuing benefit as determined under 19-7-1001, if the retired member elected an optional retirement benefit; or

(ii) if the retired member did not elect an optional retirement benefit, any payment owed the retired member, including the excess, if any, of the retired member's accumulated contributions standing to the retired member's credit at the time of retirement less payments made to the retired member must be paid to the retired member's designated beneficiary.""

Renumber: subsequent sections

-END-

Amendments to Senate Bill No. 124
Third Reading Copy

Requested by Rep. Denny
For the Committee on House State Administration

Prepared by Sheri Heffelfinger
March 6, 1997

1. Title, lines 13 and 14.

Strike: "PROVIDING THAT" on line 13

Insert: "REVISING CERTAIN PROVISIONS RELATED TO"

Strike: "MAY" on line 13 through "BOARD" on line 14

2. Page 12, lines 7 and 8.

Strike: "A court" on line 7 through "board" on line 8

Insert: "Each family law order establishing a final obligation
concerning payments by the retirement system must contain a
statement that the order is subject to review and approval
by the board"